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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/743,860

12/22/2003

John Joseph Lassig

17995

9094

23556

7590

05/23/2006

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EXAMINER

DEL SOLE, JOSEPH S

ART UNIT

PAPER NUMBER

1722

DATE MAILED: 05/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

20

<b>Office Action Summary</b>	<b>Application No.</b> 10/743,860	<b>Applicant(s)</b> LASSIG ET AL.	
	<b>Examiner</b> Joseph S. Del Sole	<b>Art Unit</b> 1722	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 May 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 7-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Election/Restrictions*

1. Claims 7-20 are withdrawn from further consideration pursuant to 37 CFR

1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 1/17/06.

### *Double Patenting*

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-4 and 6 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-24 of U.S. Patent No. 6,579,084 in view of Allen et al (5,145,689).

Claims 1-24 of 6,579,084 teach an apparatus for making a fibrous nonwoven web having an extrusion die; a first fluid supply in cooperation with the extrusion die; a

plurality of first extrusion capillaries; first counterbores allowing fluid communication between the first extrusion capillaries and the first fluid supply; and wherein each of the first counterbores has at least three of the first extrusion capillaries extending therefrom.

Claims 1-24 of 6,579,084 fail to teach a second fluid supply in cooperation with the extrusion die; a plurality of second extrusion capillaries; second counterbores allowing fluid communication between the second extrusion capillaries; the second fluid supply wherein each of the second counterbores have at least two of the second extrusion capillaries extending therefrom; 2-20 counterbores per inch of the die; a third fluid supply, a plurality of third extrusion capillaries and third counterbores allowing fluid communication between the third extrusion capillaries and the third fluid supply.

Allen et al teach first, second and third fluid supplies (Fig 2, #s 15A-15D), each with a plurality of outlets (Fig 2, #61) spaced at 2-20 per inch (col 5, lines 45-60) for the purpose of applying multiple polymers to a single collector in a controllable pattern (col 3, lines 40-55).

It would have been obvious to one having ordinary skill in the art at the time of the Applicant's invention to have modified the invention of Claims 1-24 of 6,579,084 with multiple fluid supplies separately supplying outlets counted between 2 and 20 per inch of die as taught by Allen et al and to have fashioned these outlets as counterbores with multiple capillaries in unison with the design of claims 1-24 of 6,579,084 because such design enables nonwovens to be formed of multiple materials.

4. Claims 1-3 and 6 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-24 of U.S. Patent No. 6,579,084 in view of Varona (5,679,042).

Claims 1-24 of 6,579,084 teach an apparatus for making a fibrous nonwoven web having an extrusion die; a first fluid supply in cooperation with the extrusion die; a plurality of first extrusion capillaries; first counterbores allowing fluid communication between the first extrusion capillaries and the first fluid supply; and wherein each of the first counterbores has at least three of the first extrusion capillaries extending therefrom.

Claims 1-24 of 6,579,084 fail to teach a second fluid supply in cooperation with the extrusion die; a plurality of second extrusion capillaries; second counterbores allowing fluid communication between the second extrusion capillaries; the second fluid supply wherein each of the second counterbores have at least two of the second extrusion capillaries extending therefrom; a third fluid supply, a plurality of third extrusion capillaries and third counterbores allowing fluid communication between the third extrusion capillaries and the third fluid supply.

Varona teaches first, second and third fluid supplies (Fig 5, #s 110 and 111), each with a plurality of outlets (Fig 5, at A, B and C multiple fibers are produced each) for the purpose of applying multiple polymers to a single collector in a controllable pattern (col 5, lines 5-67 and col 6, lines 50-55).

It would have been obvious to one having ordinary skill in the art at the time of the Applicant's invention to have modified the invention of Claims 1-24 of 6,579,084 with multiple fluid supplies separately supplying outlets as taught by Varona and to have

fashioned these outlets as counterbores with multiple capillaries in unison with the design of claims 1-24 of 6,579,084 because such design enables nonwovens to be formed of multiple materials.

5. Claim 5 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-24 of U.S. Patent No. 6,579,084 in view of either Allen et al (5,145,689) or Varona (5,679,042) and further in view of any of MacManus (3,878,992), Schmidt et al (5,601,773) or Martinez (4,322,202).

Claims 1-24 of 6,579,084 and either Allen et al or Varona teach an apparatus as discussed above.

Claims 1-24 of 6,579,084 fail to teach a third fluid supply wherein the second counterbores allow fluid communication between the second extrusion capillaries and the third fluid supply.

MacManus teaches multiple sources (Fig 4, #24A) each allowed fluid communication between themselves and a single outlet (Fig 4, and one #13D) for the purpose of producing a product for an outlet that is supplied from separate sources (col 11, lines 25-30). Schmidt et al teach multiple inlets directed to a single port for the purpose of producing a product formed of multiple mixed materials (col 3, lines 40-50). Martinez teaches multiple inlets to a single outlet for the purpose of producing a single product formed of multiple materials (col 2, lines 23-25).

It would have been obvious to one having ordinary skill in the art at the time of the Applicant's invention to have modified the invention of Claims 1-24 of 5,679,084 with a third fluid supply wherein the second counterbores allow fluid communication between

the second capillaries and the third fluid supply as taught by any of MacManus, Schmidt et al and Martinez because such combinations enable a greater number of output compositions.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Barbier et al (6,164,950).

Barbier et al teach an apparatus for making a fibrous nonwoven web having an extrusion die (Fig 1a); a first fluid supply (Fig 4a, #12) in cooperation with the extrusion die; a second fluid supply in cooperation with the die (Fig 4a, #13); a plurality of first extrusion capillaries (Fig 4a, leftmost #16); a plurality of second extrusion capillaries (Fig 4a, rightmost #16); first counterbores (Fig 4a, below leftmost #14) allowing fluid communication between the first extrusion capillaries and the first fluid supply; second counterbores (Fig 4a, below rightmost #14) allowing fluid communication between the second extrusion capillaries and the second fluid supply; each of the first counterbores has at least three of the first extrusion capillaries extending therefrom and each of the second counterbores has at least two of the second extrusion capillaries extending therefrom (Fig 4a); and between 2 and about 20 counterbores per inch of the die (col 6, example 2).

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

11. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barbier et al (6,164,950) in view of any of MacManus (3,878,992), Schmidt et al (5,601,773) or Martinez (4,322,202).



Barbier et al teach the apparatus as discussed above.

Barbier et al fail to teach a third fluid supply wherein the second counterbores allow fluid communication between the second extrusion capillaries and the third fluid supply.

MacManus teaches multiple sources (Fig 4, #24A) each allowed fluid communication between themselves and a single outlet (Fig 4, and one #13D) for the purpose of producing a product for an outlet that is supplied from separate sources (col 11, lines 25-30). Schmidt et al teach multiple inlets directed to a single port for the purpose of producing a product formed of multiple mixed materials (col 3, lines 40-50). Martinez teaches multiple inlets to a single outlet for the purpose of producing a single product formed of multiple materials (col 2, lines 23-25).

It would have been obvious to one having ordinary skill in the art at the time of the Applicant's invention to have modified the invention of Barbier with a third fluid supply wherein the second counterbores allow fluid communication between the second capillaries and the third fluid supply as taught by any of MacManus, Schmidt et al and Martinez because such combinations enable a greater number of output compositions.

12. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barbier et al (6,164,950) in view of Allen et al (5,145,689).

Barbier et al teach the apparatus as discussed above.

Barbier et al fail to teach a third fluid supply, a plurality of third extrusion capillaries and third counterbores allowing fluid communication between the third extrusion capillaries and the third fluid supply.

Allen et al teach first, second and third fluid supplies (Fig 2, #s 15A-15D), each with a plurality of outlets (Fig 2, #61) spaced at 2-20 per inch (col 5, lines 45-60) for the purpose of applying multiple polymers to a single collector in a controllable pattern (col 3, lines 40-55).

It would have been obvious to one having ordinary skill in the art at the time of the Applicant's invention to have modified the invention of Barbier et al with a third fluid supply separately supplying outlets counted between 2 and 20 per inch of die as taught by Allen et al and to have fashioned these outlets as counterbores with multiple capillaries in unison with the design of Barbier et al because such design enables nonwovens to be formed of more than two multiple materials.

13. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barbier et al (6,164,950) in view of Varona (5,679,042).

Barbier et al teach the apparatus as discussed above.

Barbier et al fail to teach a third fluid supply, a plurality of third extrusion capillaries and third counterbores allowing fluid communication between the third extrusion capillaries and the third fluid supply.

Varona teaches first, second and third fluid supplies (Fig 5, #s 110 and 111), each with a plurality of outlets (Fig 5, at A, B and C multiple fibers are produced each) for the purpose of applying multiple polymers to a single collector in a controllable pattern (col 5, lines 5-67 and col 6, lines 50-55).

It would have been obvious to one having ordinary skill in the art at the time of the Applicant's invention to have modified the invention of Barbier et al with third fluid

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supply separately supplying outlets as taught by Varona and to have fashioned these outlets as counterbores with multiple capillaries in unison with the design of Barbier et al because such design enables nonwovens to be formed of more than two materials.

***Response to Arguments***

14. Applicant's arguments filed 5/15/06 have been fully considered but they are not persuasive.

The Applicant argues that it is incorrect to call the structure below #14 as a counterbore. The Applicant argues that this structure is instead a polymer distributor and is similar to feature #61 in the applicant's drawings.

The Examiner disagrees. As broadly claimed the cited feature of Barbier does read on a counterbore. The cited feature receives material from a source, it itself a bore, and distributes material to capillaries.

The Applicant argues that only #15 of Barbier reads on a counter bore and that this feature fails to feed to multiple capillaries.

While #15 may also read on a counterbore it does not preclude from the cited feature from also reading on a counterbore and thus the claims remain rejected.

The Applicant argues that MacManus, Martinez and Schmidt do not provide motivation to modify Barbier because the secondary references are remote from an art standpoint.

The Examiner disagrees. All cited art pertains to the molding art. Such similarity therefore demonstrates that the art is not remote.

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The Applicant argues that the three references pertain to bringing together the separate inlets to a single outlet while Barbier et al keep the materials separated from each other throughout the entire process.

While this may be true, it does not preclude combinability. The purpose of the limitation of claim 5 and the secondary art is to alternatively shape two different materials through a single path. Combining this with Barbier expands the functionality of Barbier without changing its primary purpose or functionality.

#### ***References of Interest***

15. Lambertus (4,934,916), Lambertus (5,094,606), Lecron et al (4,473,387), Blackmon et al (5,277,855), Higuchi et al (4,242,075) and Walczak (3,659,988) are cited of interest to show the state of the art.

#### ***Conclusion***

16. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph S. Del Sole whose telephone number is (571) 272-1130. The examiner can normally be reached on M-F 8:30 - 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Joseph S. Del Sole